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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,408	02/14/2006	Christophe Pierre Antoine Marie Girard	403416/WEINSTEIN	4583
<div>23548      7590      10/16/2007</div> <div>LEYDIG VOIT &amp; MAYER, LTD 700 THIRTEENTH ST. NW SUITE 300 WASHINGTON, DC 20005-3960</div>				
			<div>EXAMINER</div> <div>BATTULA, PRADEEP CHOUDARY</div>	
			<div>ART UNIT</div> <div>3722</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>10/16/2007</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/539,408

Applicant(s)

GIRARD, CHRISTOPHE PIERRE  
ANTOINE MARIE

Examiner

Pradeep C. Battula

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

**This action is in response to the reply filed on August 1, 2007**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herlitz in view of Gallot.

In regards to Claims 1, Herlitz discloses a document filing folder 10 comprising: a cover 20 (Figure 1) including an anterior sheet (Figure 2; page on left of spiral) and a posterior sheet (Figure 2; page on right of spiral), a binding 18a joining the anterior and posterior sheets (Figure 2, Item 18a); and notebook pages securely connected to the binding (Previous Attachment; Last sentence of Novelty section) wherein a first sheet of the anterior and posterior sheets includes a first flap 33 along one of lower and upper edges of the first sheet (Figure 2, Item 33) and a second flap 32 along a lateral edge of the first sheet (Figure 2, Item 32), the flaps being foldable towards an interior side of the sheet for storing and accessing notebook pages that are respectively, (Previous Attachment; Novelty section), securely linked to the binding by folding first and second flaps successively (Attachment, Novelty section; sheets inside the notebook are disclosed and therefore notebook pages and are able to be stored in the formed pocket), one on top of the other (Figure 2, Items 32, 33), toward the interior side of the

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first sheet, with the notebook pages under the flaps folded towards the interior side of the first sheet (Attachment, Novelty Section; pages can be stored in the folded sections nothing is to prevent the bound papers from being inserted since the pocket is capable of holding the bound pages).

Herlitz does not disclose of the flaps being foldable towards and away from an interior side of the first sheet.

Gallot discloses a document filing folder with a sheet 1 with the flaps 12, 16, and 17 is the posterior sheet (Figure 1, Items 1, 12, 1, 17) wherein the flaps are hinged and not in permanent position and can be folded and unfolded (Attached Abstract).

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Herlitz with the flaps of Gallot in order to allow for the flaps to accommodate stacks of sheets having different sizes.

With respect to how the pages are stored by unfolding the flaps away from the interior side of the first sheet and notebook pages stored under the first and second flaps; even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

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In regards to Claims 2, 5, and 9, as applied to Claim 1 (Claims 2 and 5) and Claim 2 (Claim 9), Herlitz does not disclose wherein the first sheet with the flaps is the posterior sheet.

Gallot discloses a document filing folder with a sheet 1 with the flaps 12, 16, and 17, with the third flap on the upper edge, is the posterior sheet (Figure 1, Items 1, 12, 1, 17).

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use place Herlitz flaps on the posterior sheet since it has been held that rearranging parts of an invention involves only routine skill in the art. It would have also been obvious to a person having ordinary skill in the art at the time the invention was made to provide the additional flap of Gallot in order to provide an even stronger retaining means (Figure 1; Figure 3; Gallot) for Herlitz's documents.

In regards to Claim 3, as applied to Claim 1, Herlitz modified by Gallot further discloses wherein the binding includes a spiral 18a, (Attachment, Novelty section; Figure 2, Item 18a; Herlitz) enabling the notebook pages to be stored flat against the sheet with the flaps folded toward the interior side of the first sheet with the notebook pages under the first and second flaps (Figure 3, Gallot).

In regards to Claim 4, as applied to Claim 1, Herlitz modified by Gallot further discloses a document filing folder with a closing means including a rubber band 4 attached to one of the anterior sheet 2 and the posterior sheet, sliding relative to the sheet through eyelets 6 (Page 3, Lines 5 – 6; Figure 1, Items 2, 4, 6; Gallot), and which

is capable of being placed over at least one a corner of the other sheet and the sheet, parallel to the binding (Page 3, Lines 5 – 13; Gallot).

Herlitz modified by Gallot does not disclose closing means for keeping the filing folder closed while the notebook pages between the anterior and the posterior sheets, the closing means including a rubber band attached to the first sheet, sliding relative to the first sheet through eyelets, and which can be placed over at least one a corner of a second of the anterior sheet and the posterior sheet, parallel to the binding. The only difference between the prior art and Applicant's invention is the closing means is on the opposite sheet where Applicant has failed to disclose criticality to the location of the band as it would not create an unexpected result in the means of closing and fastening. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use place the band on the first sheet since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) [shifting the position of the band does not change the operation of the device].

In regards to Claim 6, as applied to Claim 2, Herlitz modified by Gallot further discloses wherein the binding includes a spiral 18a, (Attachment, Novelty section; Figure 2, Item 18a; Herlitz) enabling the notebook pages to be stored flat against the sheet with the flaps folded toward the interior side of the first asheet with the notebook pages under the first and second flaps (Figure 3, Gallot).

In regards to Claim 7, as applied to Claim 2, Herlitz modified by Gallot further discloses a document filing folder with a closing means including a rubber band 4

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attached to one of the anterior sheet 2 and the posterior sheet, sliding relative to the sheet through eyelets 6 (Page 3, Lines 5 – 6; Figure 1, Items 2, 4, 6; Gallot), and which is capable of being placed over at least one a corner of the other sheet and the sheet, parallel to the binding (Page 3, Lines 5 – 13; Gallot).

Herlitz modified by Gallot does not disclose closing means for keeping the filing folder closed while the notebook pages between the anterior and the posterior sheets, the closing means including a rubber band attached to the first sheet, sliding relative to the first sheet through eyelets, and which can be placed over at least one a corner of a second of the anterior sheet and the posterior sheet, parallel to the binding. The only difference between the prior art and Applicant's invention is the closing means is on the opposite sheet where Applicant has failed to disclose criticality to the location of the band as it would not create an unexpected result in the means of closing and fastening. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use place the band on the first sheet since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) [shifting the position of the band does not change the operation of the device].

In regards to Claim 8, as applied to Claim 3, please review the rejection of Claim 7 while keeping in mind the rejection of Claim 3.

In regards to Claim 10 and 11, as applied to Claim 3, please review the rejection of Claims 5 and 9 while keeping in mind the rejections of Claim 3 and 4.

***Response to Arguments***

Applicant's arguments with respect to claims 1 – 11 have been considered but are moot in view of the new ground(s) of rejection.

In regards to the pages not being able to be placed under flaps, the flaps can easily reach the pages that are binded considering the size of the sheets in spiral notebooks and the size of flaps required to hold sheets.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pradeep C. Battula whose telephone number is 571-



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272-2142. The examiner can normally be reached on Mon. - Thurs. & alternating Fri.

7:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PCB  
Patent Examiner  
October 3, 2007

*Monica S. Carter*  
MONICA CARTER  
SUPERVISORY PATENT EXAMINER